breach may be brought thereon? It is true that a judgment has been held to be a contract in some cases; *Johnson & Stevens* v. *Butler* (1856), 2 Ia. 535; *Childs* v. *Harris Mfg. Co.* (1887), 68 Wis. 231; *Sawyer* v. *Vilas* (1846), 19 Vt. 43; *Sprott* v. *Reid* (1852), 3 G. Greene (Ia.) 489; in the majority of these cases the question decided was whether a judgment was a contract within the meaning of statutes which manifestly intended to divide all causes of action into two broad classes, actions on "contract" and actions on "tort." It would be generally conceded that if the field of actions were to be so divided judgments would fall into the "contract" rather than the "tort" class; and one would ascribe no other idea than that to the legislators since judgments have generally been classified as one species of contracts of record. Nearly all of the cases have refused to recognize judgments as contracts where this broad division is not clearly intended, as for instance in cases where the question of the unconstitutionality of a law as impairing the obligation of contract is raised. *Morley* v. *Lake Shore & M. S. Ry. Co.* (1892), 146 U. S. 162; *O'Brien* v. *Young* (1884), 95 N. Y. 428; *Jordan* v. *Robinson* (1838), 15 Me. 167; *Masterson* v. *Gibson* (1876), 56 Ala. 56; *Wolffe* v. *Eberlein* (1883), 74 Ala. 99; *Larrabee* v. *Baldwin* (1868), 35 Cal. 155; *Wyoming National Bank* v. *Brown* (1898), 7 Wyo. 494; *Gaffney* v. *Jones* (1905), 39 Wash. 587, 81 Pac. 1058; *Sheehan & Loler Transp. Co.* v. *Sims* (1887), 28 Mo. App. 64. There seem to be no cases which have gone so far in regarding a judgment as a contract as to allow an action for damages for failure to satisfy it. In this respect the principal case is, at least, novel and likely erroneous. G. S.

INTERVENING AGENCY AS AN ELEMENT IN DETERMINING PROXIMATE CAUSE. —In the law of negligence, probably no sub-division is of greater importance than that of proximate cause and incidentally the elements affecting and constituting it.

The case of *Scott* v. *Shepherd*, 2 W. Bl. 892, famous as the "Squib Case" and often cited, is a very early case on the effect of an intervening act on proximate cause, having been decided in the reign of George III, but this case was decided on the theory of "natural and probable result" rather than on the point of intervening agency.

In the recent decision of the supreme court of Illinois in the case of *Seith* v. *Commonwealth Electric Co.* (1909), — Ill. —, 89 N. E. 425, there is an extensive discussion of the effect on proximate cause of an intervening agency, the facts of the case being that a live electric light wire broke and fell into the street where it lay between the sidewalk and the roadway; and as the plaintiff was passing, a policeman struck the wire with his club and threw it against the plaintiff, who received therefrom a severe shock which caused the injuries alleged. It was held, VICKERS and CARTER, JJ., dissenting, that the act of the policeman in striking the wire with his club was an independent act which the defendant was not bound to foresee and that this and not the original negligence was the proximate cause of the injury.

It is altogether probable that no two accidents ever happen in exactly the same way and the courts generally determine cases involving proximate cause

upon facts as they exist in the particular case, and especially do they do so in situations wherein it is alleged that facts constituting an intervening agency, such as would excuse the author of the original negligent act, are present. If we may admit that in the commission of the primal act there is actionable negligence, though a cause intervenes between it and the injury, the courts will not ordinarily look back of the last efficient cause. *Stone* v. *Boston etc. R. Co.*, 171 Mass, 536, 51 N. E. 1, 41 L. R. A. 794, particularly when that cause intervening, operated in the hands of some human being. *Malmberg* v. *Bartos*, 83 Ill. App. 481; *Glassey* v. *Worcester Consol. St. R. Co.*, 185 Mass. 315, 70 N. E. 199. But if the original act or omission supplied the condition by which the subsequent act or cause was rendered hurtful, he who committed that act is responsible. *Walters* v. *Denver Consol. Elec. Light Co.*, 12 Colo. App. 145; *Skinn* v. *Reutter*, 135 Mich. 57, 106 Am. St. Rep. 384. However, prior and remote causes cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury is made possible if there intervened between such prior and remote cause and the injury a distinct, unrelated and efficient cause of the injury. If no danger existed in the condition except because of the independent cause such condition was not the proximate cause. And if an independent negligent act or defective condition sets into operation the circumstances which because of the prior defective condition results in injury, such subsequent act or condition is the proximate cause, 29 Cyc. 496 and cases there cited; *Reddick* v. *Gen. Chem. Co.*, 124 Ill. App. 31, but an existing condition contributing to the negligent act and making it more dangerous does not constitute proximate cause. *Hardt* v. *Chicago etc. R. Co.*, 130 Wis. 512, 110 N. W. 427; *Foley* v. *Pioneer Min. & Mfg. Co.*, 144 Ala. 178, 40 South. 273.

To be effective, however, in lifting the burden of liability from the author of the original negligent act, the intervening agency must also be an efficient cause. An intervening, efficient cause is a new and independent force which breaks the causal connection between the original wrong and the injury, *Pullman Palace Car Co.* v. *Laack*, 143 Ill. 242, 32 N. E. 285, 18 L. R. A. 215, and such new force must be sufficient to itself stand as the cause of the injury. *Peoria* v. *Adams*, 72 Ill. App. 662. But if the new cause thus intervening merely accelerates an original cause which in itself was sufficient to produce the injury, the first act is still the proximate cause. *Thompson* v. *Louisville etc. R. Co.*, 91 Ala. 496, 8 South 406, 11 L. R. A. 146. If the intervening act may be considered as the sole and only cause of the alleged injury, then the author of the earlier negligent act is released from responsibility for his wrong. *Quill* v. *N. Y. Cent. etc. R. Co.*, 16 Daly (N. Y.) 313; *Smith* v. *Naushon Co.*, 26 R. I. 578.

On the other hand it has been repeatedly held that the mere fact that there have been intervening causes between the original act of negligence and the injuries alleged to have resulted therefrom, is not sufficient in law to release him from liability who committed the primal wrong. 21 Am. & Eng. Encyc. (2nd Ed.) 490 and cases there cited. But where an injury might

reasonably have been anticipated, though it is not necessary that the injury in its precise form be foreseen, (*Hill* v. *Winsor,* 118 Mass. 251, 259,) notwithstanding the intervention of an independent agency, the causal connection is not broken and the original wrongdoer is liable for the injuries resulting from his wrong. *Southern R. Co.* v. *Webb,* 116 Ga. 152, 42 S. E. 395, 59 L. R. A. 109; *O'Connor* v. *Andrews,* 81 Tex. 28, 16 S. W. 628.

The theory upon which the decision in the principal case (*Seith* v. *Commonwealth Elec. Co.,* supra) is based may be stated thus: if the intervening act be one such as might not reasonably be anticipated, then the causal connection between the act and the injury is broken and the original wrongdoer is released from liability for his wrongful act. This principle is stated conversely in the cases of *Lane* v. *Atlantic Works,* 111 Mass. 136; *Williams* v. *Koehler,* 41 N. Y. App. Div. 426, 58 N. Y. Supp. 863 and others. The argument of the majority opinion, rendered by CARTWRIGHT, C. J., consists of an attempt to show that the act of the policeman in trying to remove the wire from its position and probably relieve a dangerous situation, was one not to be anticipated and therefore applying the rule as above stated, no liability attaches to the owner of the wire. However, adopting the logic of the dissenting opinion of VICKERS, J., this position is untenable for as stated above, the precise form of the act is not what is to be foreseen, but rather the probability of any act occurring which would in some manner cause injury to a third party. H. L. P.

APPLICATION OF MICHIGAN STATUTE FOR THE BENEFIT OF LABORERS AND MATERIALMEN ON PUBLIC WORKS AND THE RIGHT OF THIRD PARTIES TO SUE.—As mechanics' liens do not attach to public works in Michigan (*Knapp* v. *Swaney,* 56 Mich. 345) by statute a bond is required of the contractor to pay for all labor and materials furnished in public works. The recent decision of the supreme court of Michigan in the case of the *City of Alpena for the Use and Benefit of Isaac Zess* v. *Title Guaranty & Surety Company,* decided December 10, 1909, 16 Det. L. N. 783, 123 N. W. 536, shows the apparent desire of the Michigan courts to give unpaid laborers and materialmen of public works, the protection of this statute. The cases cited in the opinion, however, hardly sustain the propositions made by the court to the full extent for which they are given, and the correctness of the conclusion of the court in this case, it would seem, might be questioned.

The facts in the case were, briefly, that the Murray Company made a contract with the city of Alpena to construct a water-works system. A bond was given by the contractor to the city, with the Title Guaranty Surety Company as surety. Labor and materials on this work were furnished which have never been paid for. The unpaid laborers and materialmen, claiming that the bond given comes within the statute requiring a bond for their protection, bring suit against the surety.

By a comparison of the language of the bond given with the language of the statute, it is plainly evident that the purpose of this bond was not to protect the laborers and materialmen. The statute in the consecutive sections